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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
NAHEED MANGI,)
Defendant.)
)
No. 18-CR-00260 EJD
DEFENDANT'S MOTION FOR
JUDGMENT OF ACQUITTAL AND
MOTION FOR A NEW TRIAL;
SUPPORTING MEMORANDUM
OF POINTS AND AUTHORITIES

MOTION

Defendant Naheed Mangi, by and through counsel, hereby moves this Court for an order setting aside the verdict and entering an acquittal as to Counts 1, 2 and 3 of the Indictment. This motion is based upon the Memorandum of Points and Authorities that follows.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTIONS

GENERAL STATEMENT OF THE LAW

Rule 29(a) of the Federal Rules of Criminal Procedure provides that the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. As noted by the Ninth Circuit, such motion is reviewed on a sufficiency-of-the-evidence standard. *United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir.2010) (quoting *United States v. Stoddard*, 150 F.3d 1140, 1144 (9th Cir. 1998)). Further, under that standard, evidence supports a conviction, if, viewed in the light most favorable to the

1 government, it would allow any rational trier of fact to find the essential elements of the crime
 2 beyond a reasonable doubt." *Id.* (quoting *Stoddard*, 150 F.3d at 1144).

3 Rule 33(a) of the Federal Rules of Criminal Procedure states that upon a defendant's
 4 motion, the court may vacate any judgment and grant a new trial if the interest of justice so
 5 requires.

6 FACTUAL OVERVIEW

7 Ms. Mangi is charged in Count One of the Indictment with, essentially, knowingly causing the
 8 transmission of information that results in causing damage without authorization to a protected
 9 computer and thereby causing a loss of more than \$5,000. The specific code section alleged is 18
 10 U.S.C. §§1030(a)(5)(A), (c)(4)(B)(i), (c)(4)(A)(i)(I). In Count Two Ms. Mangi is charged with,
 11 essentially, knowingly causing the transmission of information that results in the modification or
 12 impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment,
 13 or care of 1 or more individuals. The specific code section alleged is 18 U.S.C. §§1030(a)(5)(A),
 14 (c)(4)(B)(i), (c)(4)(A)(i)(II). Each of these two counts allege the transmission of information as opposed
 15 to accessing a computer. However, in Count Three Ms. Mangi is, essentially, charged with intentionally
 16 accessing a protected computer without authorization and obtaining information. The specific code
 17 section alleged is 18 U.S.C. §§1030(a)(2)(C).

18 Following the close of evidence, as to Counts One and Two, the jury was charged with case-
 19 modified versions of 9th Cir. Model Criminal Instruction No. 15.27; stating the alleged action as
 20 transmission, not accessing, within the first element. And for Count Three, the jury was charged with
 21 a case-modified version of 9th Cir. Model Criminal Instruction No. 15.24; stating the alleged action as
 22 accessing a computer, not transmitting.

23 THE APPLICABLE STATUTES

24 18 U.S.C. §1030¹ has many different crimes included within it, some concern the act of
 25 accessing a computer and others concern the act of transmitting of information. For example,
 26 §1030(a)(5)(A), the crimes charged in this case, concern transmitting while §1030(a)(5)(B) concerns
 27 accessing and is not charged in this case.

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¹ Unless otherwise stated, all references to code sections refer to Title 18 of the United States Code.

1 18 U.S.C. §1030 also has different penalties included within it, depending, in part, on the
2 consequences of the act. For example, when the conduct is charged under §1030(a)(5)(A) and there is
3 an allegation that the transmission caused a monetary loss of more than \$5,000, the penalty is listed
4 under §§1030(c)(4)(B)(i), (c)(4)(A)(i)(I). As another example, when the conduct is charged under
5 §1030(a)(5)(A) and there is an allegation that the transmission caused harm regarding certain medical
6 matters for one or more individuals, the penalty is listed under §§1030(c)(4)(B)(i), (c)(4)(A)(i)(II).

ARGUMENT

A. The Evidence Is Insufficient to Establish That Ms. Mangi Caused Any Transmission as Alleged in Counts One and Two.

At the trial, the Government alleged that Ms. Mangi was the person who used the Samsung computer found by law enforcement at her apartment during the search to transmit information to the CMed database through the AT&T WiFi account assigned to her. The evidence presented in this case is insufficient to establish that the Samsung introduced into evidence was the computer that was used for the transmission to the database. The evidence is insufficient to establish that Ms. Mangi was the person who transmitted the information to the database.

B. The Evidence Is Insufficient to Establish That Ms. Mangi's Transmission Caused Harm through a Modification or Impairment, or Potential Modification or Impairment, of the Medical Examination, Diagnosis, Treatment, or Care of an Individual as Alleged in Count Two.

19 While accurately reflecting the Indictment in this case, the instructions to the jury and the verdict
20 returned by the jury as to Count Two inaccurately reflects the applicable code section. Therefore, the
21 verdict should be set aside and an acquittal entered as to that Count.

22 In this case, Count Two is a charge of transmitting, not accessing. The applicable subdivision
23 of §1030(a)(5) when charging conduct involving transmitting is (A). While the applicable subdivision
24 of §1030(a)(5) when charging conduct involving accessing is (B).

When the crime charged concerns transmitting, as it does in this case, the facts to be established for the purpose of determining sentence falls under §1030 subdivision (c)(4)(B)(i) along with §1030 subdivision (c)(4)(A)(i)(II). Therefore, by the specific language of under §1030 subdivision (c)(4)(B)(i), it is required that the defendant's transmission **caused a harm**.

1 At trial, the Government's argument essentially was that the charge is proven if, down the line,
 2 over a period of time, irrespective of other safeguards, the transmission might cause a modification or
 3 impairment of a person's medical examination, diagnosis, treatment or care of an individual. This
 4 potential to cause harm argument is an inaccurate reading of the statute when the crime charged is one
 5 of transmitting.

6 In requiring that harm was caused, there is no language in that subsection allowing for
 7 consideration of "potential" to cause harm. Further, the import of the inclusion of the requirement of
 8 (actually) causing harm in the subdivision pertaining to the charge of transmission and not including
 9 that phrase in the subdivision pertaining to the charge of accessing is clear and should not be ignored.

10 In this case, there is no evidence that any harm occurred by the transmission.

11 **C. The Evidence Is Insufficient to Establish That by Accessing a Computer, Ms. Mangi
 12 "Obtained" Information from a Computer as Charged in Count Three.**

13 With respect to Count Three, §1030(a)(2)(C) prohibits unlawfully **obtaining** information from
 14 a protected computer. At trial, the Government argued that simply viewing the CMed database
 15 qualified as "obtaining" information. This is not correct. This statute does not prohibit simply
 16 accessing a protected computer or even browsing the information once accessed. Information must be
 17 obtained from that access.

18 In this case, there is no evidence to suggests that Ms. Mangi printed out, recorded, or
 19 used the information she browsed. No rational jury could conclude beyond a reasonable doubt
 20 that she intended to use or disclose that information, and merely viewing information should not
 21 be deemed the same as obtaining something. *See, e.g., United States v. Czubinski*, 106 F.3d
 22 1069, 1078-79 (1st Cir. 1997) (discussing the application of the CFAA in a criminal context to
 23 a person convicted for browsing through IRS files but not sending or obtaining that
 24 information).

25 **D. Should the Motion for Judgment of Acquittal be Denied, The Motion for New Trial
 26 Should be Granted.**

27 As noted in *United States v. Alston*, 974 F.2d 1206, 1211 (9th Cir. 1992), a district court's
 28 power to grant a motion for a new trial is much broader than its power to grant a motion for

1 judgment of acquittal. Given the above arguments, it would be in the interest of justice to grant
2 Ms. Mangi a new trial.

3 **CONCLUSION**

4 For the foregoing reasons, the verdict as to each count should be set aside and a acquittal entered
5 pursuant to Rule 29 of the Federal Rules of Criminal Procedure. Alternatively, the Court should vacate
6 the judgment and grant a new trial.

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8 Dated: March 31, 2025

Respectfully submitted,

9 /s/

10 CARLEEN R. ARLIDGE
11 Attorney For Defendant

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